

Christina L. Henry, WSBA# 31273
chenry@hdmlegal.com
Henry & DeGraaff, PS
787 Maynard Ave S
Seattle, WA 98104
Tel: +1-206-330-0595
Fax: +1-206-400-7609

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON

OSURE BROWN,
*on his own behalf and on behalf of
other similarly situated persons,*

Plaintiff,

v.

TRANSWORLD SYSTEMS, INC.,
PATENAUDE & FELIX, APC, U.S. BANK,
NA. NATIONAL COLLEGIATE STUDENT
LOAN TRUST 2004-1, NATIONAL
COLLEGIATE STUDENT LOAN TRUST
2004-2, NATIONAL COLLEGIATE
STUDENT LOAN TRUST 2005-1,
NATIONAL COLLEGIATE STUDENT
LOAN TRUST 2005-2, NATIONAL
COLLEGIATE STUDENT LOAN TRUST
2005-3, NATIONAL COLLEGIATE
STUDENT LOAN TRUST 2006-1,
NATIONAL COLLEGIATE STUDENT
LOAN TRUST 2006-2, NATIONAL
COLLEGIATE STUDENT LOAN TRUST
2007-1, and NATIONAL COLLEGIATE
STUDENT LOAN TRUST 2007-2,

Defendants.

Case No: 2:20-cv-00669

AMENDED COMPLAINT

(JURY DEMAND)

Plaintiff Osure Brown, on his behalf and on behalf of similarly situated persons, brings
this action by his undersigned counsel and says in support:

1 **I. INTRODUCTION**

2 1. The Defendants have worked together and collectively orchestrated to collect
3 and attempt to collect debts through unfair and/or deceptive claims, which were lawfully
4 discharged in bankruptcy, by falsely claiming that certain loans they allegedly acquired (the
5 “Discharged Loans”) were covered by a limited and specific exception to bankruptcy
6 discharges, when they knew they were not. Defendants were able to perpetrate their ongoing
7 and extensive unfair and deceptive acts and omissions by refusing to disclose documents and
8 information to consumers, including the Plaintiff, that showed that their debts did not meet the
9 criteria for exclusion from bankruptcy discharges. In the absence of the information, that was in
10 the exclusive possession of the defendants and their affiliates and agents, there was no
11 reasonable way for the Plaintiff and putative class members to know that the loans did not meet
12 the criteria for exception from the bankruptcy discharges. Only after documents were finally
13 publicly disclosed were the Defendants’ scheme and unfair and deceptive practices and
14 wrongdoing exposed.

15 a. The Defendants knew but recklessly disregarded the fact that they did not
16 have the lawful right to collect any sums from the Plaintiff and the Class members
17 because the accounts they sought to collect had been discharged in bankruptcy. They
18 have acted in concert to claim such a right when they knew that they had no such right.
19 They had information in their exclusive possession and control and knew they lacked
20 other information to support their claims. This was all concealed from the Plaintiff,
21 Class members, and the public at large until a period of time less than 12 months before
22 the commencement of this action) that they had no such right.

23 b. Defendants also knew but recklessly, unfairly, and deceptively
24 disregarded the fact that they did not have the right to flood the courts with consumer
25 debt collection actions under the color of law, based upon records they knew were
26 unreliable, inadequate, and/or infected with inaccurate information.

1 c. Notwithstanding this knowledge, as part of their pattern and practice
2 related to their unfair, deceptive, and/or unconscionable debt collection practices,
3 Defendants through their affiliates and authorized agents collected and attempted to
4 collect on thousands of certain purported consumer debts, which they acquired for
5 pennies on the dollar of what they claimed was due, that have been discharged in
6 bankruptcy.

7 d. The supposed debts are based on (i) non-governmental loans (ii)
8 originated for student borrowers (and their families) but (iii) not funded for a “qualified
9 education loan,” which is specifically defined pursuant to 28 U.S.C. § 221(d)(1).
10 Instead, the Plaintiff and Class members’ loans at issue were for amounts in excess of
11 the actual cost of education to the Plaintiff and Class members and therefore did not
12 meet the statutory requirements to be excluded from bankruptcy discharges.

13 2. As a direct and proximate result of the Defendants’ acts and omissions, the
14 Plaintiff and Class members have sustained damages and losses in the form of (i) incurred costs
15 to defend the Defendants’ improperly pursued debt collection actions, (ii) payments made to the
16 Defendants which were not lawfully owed, and (iii) stress, worry, frustration, and anxiety related
17 to the Defendants’ debt collection activities. Plaintiff and the Class members are also entitled to
18 statutory damages.

19 II. JURISDICTION AND VENUE

20 3. This action arises under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692
21 et seq. (“FDCPA”), the Washington State Consumer Protection Act, RCW 19.86 et seq.
22 (“WCPA”), the Washington State Collection Agency Act, RCW 19.86 et seq. with is enforced
23 through the WCPA (“WCAA”), and the Bankruptcy Discharge under 11 U.S.C § 524(a)(2)
24 which is enforced through the bankruptcy court’s contempt powers under 11 U.S.C § 105.

25 4. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C. § 1692k(d),
26 28 U.S.C. §§ 1331, 1334(a), 1337. Supplemental jurisdiction exists for state law claims
pursuant to 28 U.S.C. § 1367.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, as each defendant conducts business in this District and a substantial portion of the events or omissions giving rise to the claims occurred within this District.

III. PARTIES

6. Plaintiff Osure Brown is a citizen of Washington state and the borrower on the consumer loans at issue.

7. Defendant Transworld Systems, Inc. (“Transworld”) is a debt collector which acts on behalf of US Bank for the NCSLT Trusts and is engaged in the business of a collection agency, using the mails and telephone to collect consumer debts allegedly owed to others. Transworld is a corporation chartered under California law with offices at 507 Prudential Road, Horsham, Penn., 19044. Transworld does business in Washington, and its registered agent in Washington is CT Corporation System, 711 Capital Way S., Ste. 204, Olympia, Washington 98501. In addition:

a. Transworld is a debt collector as defined in the FDCPA. It acquired the alleged consumer loan accounts of the Plaintiff and Class members at a time when it knew Plaintiff's and Class members' debts were in default on or about November 1, 2014. Among the debts Transworld collects are "private student loans" allegedly owed to the NCSLT Trusts.

b. Transworld is managed by a Board of Directors.

c. To carry out part of its consumer collections business, it also operates and manages an Attorney Network business unit, which includes Defendant Patenaude & Felix, APC, that files debt collection lawsuits in Washington and nationwide to collect on behalf of the NCSLT Trusts.

1 d. These “Agency and Attorney Networks” were described on TSI’s
2 website¹ as follows:

3 Transworld Systems Inc. is expanding its existing Agency and Attorney
4 Networks with current and new business opportunities. We are extremely proud
5 of our Agency and Attorney Networks which designs and implements cost-
6 effective collection solutions on behalf of clients across the country. We manage
7 a nationwide network through leading edge technology and the expertise needed
8 to achieve results.

9 We strive to surpass the growing and complex needs of our clients through the
10 professional services provided by our Agency and Attorney Networks. TSI is
11 currently seeking collection agencies and law firms to support our growing
12 network and expanded business opportunities. TSI has a variety of business
13 opportunities in which we are seeking professional, cost-conscious industry
14 experts to join our Agency and Attorney Networks. The business opportunities
15 contain, although not limited to, the following: healthcare, commercial, student
16 loans, telecommunications, and bank card.

17 e. Transworld is a licensed Washington collection agency under UBI# 600-
18 169-996.

19 f. Transworld is a person subject to RCW Ch. 19.86.

20 g. Transworld was not included as a creditor in Osure Brown’s bankruptcy.

21 8. Defendant Patenaude & Felix, A.P.C. (“P & F”) is a debt collection law firm
22 incorporated in California. P & F is a professional corporation doing business under the laws of
23 Washington. P & F’s registered agent in Washington is Matthew Cheung, who conducts
24 business out of an office in Lynnwood, Washington.

25 9. P & F seeks to collect defaulted consumer debts on behalf of the NCSLT Trusts
26 through litigation and the mails. In addition:

a. P & F is a debt collector as defined in the FDCPA. It regularly collects or
attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or

¹ https://web.archive.org/web/20150511054427/https://www.tsico.com/Services/Agency_Atorney_Network.html

1 due another including the alleged loan accounts of the Plaintiff and putative class
2 members.

3 b. P & F is managed by a Board of Directors.

4 c. To carry-out part of its consumer collections business, it also operates as
5 part of Transworld's Attorney Network business unit and files debt collection lawsuits in
6 Washington and nationwide to collect on behalf of the Trusts.

7 d. P & F is a licensed Washington collection agency.

8 e. P & F is a person subject to Revised Code of Washington Ch. 19.86.

9 f. P & F and its lawyer in Washington, Matthew Cheung, have, by service
10 and/or filing, commenced over 1400 lawsuits in the State of Washington on behalf of the
11 NCSLT Trusts including hundreds of cases against the Plaintiff and the Class members.

12 g. P & F was fully aware of, countenanced, permitted, and encouraged the
13 conduct of its employee Matthew Cheung as set forth herein.

14 h. The actions of Mr. Cheung on behalf of P & F were conducted in trade or
15 commerce and primarily in connection with P & F's business has a collection agency.

16 i. Matthew Cheung is an employee of P & F, and is a lawyer licensed to
17 practice law in the state of Washington and practices law from an office address in
18 Lynnwood, Wash.

19 j. P & F was not included as a creditor in Osure Brown's bankruptcy.

20 10. Defendants National Collegiate Student Loan Trust 2004-1, National Collegiate
21 Student Loan Trust 2004-2, National Collegiate Student Loan Trust 2005-1, National Collegiate
22 Student Loan Trust 2005-2, National Collegiate Student Loan Trust 2005-3, National Collegiate
23 Student Loan Trust 2006-1, National Collegiate Student Loan Trust 2006-2, National Collegiate
24 Student Loan Trust 2007-1, and National Collegiate Student Loan Trust 2007-2 (collectively
25 "NCSLT Trusts" or "the Trusts") are Delaware statutory trusts, formed and existing pursuant to
26 the laws of the state of Delaware for the purpose of acquiring purported consumer debts.

1 11. Defendant U.S. Bank, NA is a National Banking Association which does
2 business in King County, Washington.

3 12. U.S. Bank serves as the “indenture trustee” for the NCSLT Trusts. U.S. Bank’s
4 role in the Trusts is not in pursuit of its consumer banking activities.

5 13. U.S. Bank became “Special Servicer” to the Trusts in 2012.

6 14. U.S. Bank, rather than perform as Special Servicer, engaged and delegated its
7 responsibilities, negligently, to Turnstile Capital Management, LLC (“Turnstile”). US Bank,
8 directly or through Turnstile, had the duty to properly supervise and control the activities of
9 Transworld and its Attorney Network, and for breach of that duty is vicariously liable for the
10 torts and other wrongful conduct committed against Plaintiff and others in Washington by
11 Transworld and/or its Attorney Network.

12 15. Asserting gross negligence and other actionable wrongful conduct, the NCSLT
13 Trusts, by way of a Verified Amended Complaint filed in Delaware Chancery Court against
14 Transworld and two codefendants (*The National Collegiate Master Student Loan Trust 1, et al*
15 *v. U.S. Bank National Association, GSS Data Services Inc., Turnstile Capital Management, LLC*
16 *and Transworld Systems, Inc.*; Chancery Court of Delaware, Cause #2018-0167-JRS) (“Verified
17 Amended Complaint”),² (a copy of which is Exhibit A, hereto), against U S. Bank, Turnstile,
18 and GSS Data Services, Inc., made, among others, the following allegations which, on
19 information and belief, after investigation, Plaintiff asserts are accurate, and on information and
20 belief reallege:

21 16. ¶45 “Neither the Trusts nor the Owners approved these arrangements with
22 Turnstile or with Transworld. To the contrary, the Owners specifically informed the
23 Administrator and U.S. Bank that they did not want Turnstile or TSI to perform any services
24
25

26 ² As of 2020, this suit has been consolidated with three others as *In re National Collegiate Student Loan Trusts*
Litigation, C.A. No. 12111-VCS (Del. Ch. Jan. 21, 2020).

1 relating to the Trusts. But the Administrator and U.S. Bank refused to follow the instructions
2 from the Owners. The Trust did not hire Turnstile or TSI, neither Turnstile nor TSI acts at the
3 direction of the Trusts, and they do not follow any directions or instructions issued by the
4 Trusts. To the contrary, as discussed below, while the Owners of the Trusts have requested that
5 TSI cease filing lawsuits in the name of the Trusts where TSI cannot prove that the Trusts have
6 standing to collect on defaulted loans, TSI has nevertheless continued to file such lawsuits.”

7 17. ¶46. “To the contrary, TSI is an agent of U.S. Bank as Special Servicer. Under
8 the Special Servicing Agreement, U.S. Bank was responsible for ‘the enforcement, collection
9 and servicing of Delinquent Loans and Defaulted Loans. . . .”

10 18. ¶47. “U.S. Bank’s duties further included monitoring the performance of
11 Turnstile and replacing it if it was deficient or negligent in performing its duties. As set forth
12 herein, Turnstile’s performance of its duties was deficient and negligent, but U.S. Bank failed to
13 monitor Turnstile’s performance and failed to replace Turnstile as Subservicer.”

14 19. The remainder of the allegations as they pertain to U.S. Bank in said Verified
15 Amended Complaint establish that U.S. Bank was in a position to prevent and avoid the unfair
16 and deceptive acts and practices performed by Transworld and the attorneys from Transworld’s
17 Attorney Network acting in Washington and elsewhere; that U.S. Bank knew of and was fully
18 informed about said unfair and deceptive acts and practices being performed in Washington and
19 elsewhere; that U.S. Bank had a duty to prevent and avoid such unfair and deceptive acts and
20 practices; and that U.S. Bank negligently and/or grossly negligently and/or intentionally failed
21 to prevent such unfair and deceptive acts and practices in Washington and elsewhere, and in fact
22 aided and abetted the commission of such unfair and deceptive acts and practices in Washington
23 and elsewhere by Transworld and the attorneys retained by Transworld to act in the name of the
24 NCSLT Trusts in Washington and elsewhere.

25 20. The doctrine of respondeat superior applies to U.S. Bank, and renders it
26 responsible for the wrongful conduct of Transworld in Washington and elsewhere as herein

1 alleged and for the wrongful actions of the attorneys retained by Transworld to act in the name
2 of the NCSLT Trusts in Washington and elsewhere.

3 21. Paragraphs 71 through 79 of the said Verified Amended Complaint establish that
4 U.S. Bank and Transworld were fully aware that key portions of instruments which allegedly
5 transferred the Discharged Loans or servicing rights thereto, including Schedule 1, Schedule 2,
6 or Schedule 3 (collectively the "Loan Schedules") to those instruments, do not exist. Despite
7 that knowledge, Transworld, with the knowledge and consent of U.S. Bank, has failed to
8 disclose these material facts and continued in many cases, in Washington and elsewhere, to file
9 affidavits and/or declarations under oath which falsely and knowingly testify that such
10 schedules do exist, and that the affiant or declarant has personal knowledge of their existence
11 and to mislead as to the true nature of the loans.

12 22. Paragraphs 80 through 85 of said Verified Amended Complaint set forth
13 examples of case authority and rulings which establish that U.S. Bank, and Transworld, knew
14 that the declarations and affidavits, submitted to support claims made in the name of NCSLT
15 Trusts, concerning loan documentation were false.

16 23. In fact, Transworld has not only failed to disclose material facts but has created
17 false documents purporting to reflect the Loan Schedules from the original "Pool Supplement
18 Agreements" and Transworld, through its employees and through its Attorney Network, falsely
19 represented, through false affidavits and/or declarations, and through false statements in
20 pleadings, testified or asserted that such documents were genuine loan documents and that the
21 attorney, affiant or declarant had personal knowledge of their authenticity.

22 24. The foregoing omissions and statements made in, or summarized from, the said
23 Verified Amended Complaint constitute admissible evidence under Washington Evidence Rule
24 801(d)(2).

25 25. U.S. Bank has been fully aware of the Transworld Stipulation and Consent
26 Order Issued by the Consumer Financial Protection Bureau ("CFPB") on September 18, 2017
and available publicly at <https://www.consumerfinance.gov/administrative-adjudication->

1 [proceedings/administrative-adjudication-docket/transworld-systems-inc/](#), and fully aware of the
2 unfair and deceptive acts and practices, including violations of the CAA and CPA that
3 Transworld and U.S. Bank permitted, consented to, and aided and abetted those unfair or
4 deceptive acts and practices.

5 26. U.S. Bank was, and is, bound by the Transworld Consent Order issued by the
6 CFPB. That order imposed both affirmative and prohibitory duties upon U.S. Bank. U.S. Bank
7 has failed and/or refused to act in accordance with its duties under said Transworld Consent
8 Order. The failure of U.S. Bank to act in accordance with its duties under the Transworld
9 Consent Order, and to ensure and enforce Transworld's compliance with that Consent Order,
10 establishes that US Bank's consent to, and aiding and abetting in the commission of, unfair and
11 deceptive acts and practices by Transworld in violation of the CAA and the CPA was willful
12 and knowing.

13 27. The actions, omissions, and non-actions of US Bank in consenting to, and aiding
14 and abetting, the unfair and deceptive acts and practices of Transworld in violation of the CAA
15 and the CPA, are themselves unfair practices in violation of the CPA, when committed by a
16 national banking association in, or related to, its status as a trustee for the Trusts.

17 28. At all times relevant to this Complaint, Transworld has acted as the debt
18 collector on behalf of the Trusts and the Trusts expressly authorized Transworld to carry out all
19 work that it has done on their behalf.

20 29. The Trusts are persons subject to RCW Ch. 19.86.

21 30. The Trusts, directly and indirectly, filed false claims in bankruptcy proceedings
22 and are subject to the discharge injunction related to the Plaintiff's bankruptcy and the
23 bankruptcies of the putative class members. The Trusts failed to disclose material facts that
24 would have exposed that the affirmative statements made by the Trusts were untrue and the
25 loans were subject to discharge, and the affirmative acts were designed to mislead borrowers in
26 bankruptcy proceedings. The Trusts are not entitled to benefit from their unfair or deceptive
practices.

1 31. U.S. Bank, TSI and P & F have pursued collections of debts that are not legally
2 enforceable through debt collection correspondence and litigation.

3 32. In relation to the Plaintiff and the Class members, at all times the Defendants
4 knew that there was a defaulted debt, that the debt had been discharged in bankruptcy, and they
5 engaged in unfair and deceptive collection efforts after the discharge. Not only were the
6 Plaintiff and the Class members harmed by this conduct, but so too were the other, honest
7 creditors who did not conceal the true facts and circumstances known to them from the Plaintiff
8 and Class members, the bankruptcy courts, U.S. Trustees, and others.

9 33. This Court has jurisdiction over Transworld, P & F, U.S. Bank and the NCSLT
10 Trusts because they do business in Washington State by collecting or attempting to collect debts
11 from Washington State residents who they allege owe debts to the Trusts. Therefore,
12 Defendants have obtained the benefits of the laws of Washington (without the right to do so),
13 and Defendants are subject to the jurisdiction of this Court.

14 34. Venue is proper in this District because a substantial part of the events or
15 omissions giving rise to the claim occurred in this District. 28 U.S.C.A. §1391(b)(2).

16 **IV. FACTUAL BACKGROUND**

17 **A. NCSLT and Transworld Background**

18 35. Based on publicly available documents and information and belief, the Trusts are
19 investment vehicles that engaged in the practice of buying and selling large numbers of
20 education-related consumer loans and collecting payments from the borrowers for the benefit of
21 investors. The Trusts have been subject to significant litigation, including some discussed *infra*,
22 and are aware that the assets (i.e. the purported student loans) acquired by them subject to this
23 action are unenforceable since the debts are discharged and they otherwise cannot enforce them
24 since they lack sufficient reliable information to enforce any alleged debt. What was not publicly
25 available, and only disclosed in the twelve months preceding the filing of the original Complaint
26 in this action (before removal), was that the loans are unenforceable by the Trusts and they do
not qualify to be excepted under any exception to bankruptcy discharges.

1 36. As the Trusts have no employees, any actions performed nominally by a Trust or
2 on its behalf are actually performed by its board and management structure, servicers, or by
3 attorneys hired by the servicers. On information and belief, NCO Financial Systems, Inc. claims
4 to be the default servicer for the Trusts until November 1, 2014, at which time Transworld
5 became the successor in interest to NCO.

6 37. Transworld became the alleged default loan servicer for the Plaintiffs' and Class
7 members' account loans at a time when it believed the loans were in default and Transworld
8 treated the loans as in default. Transworld became the servicer for the Discharged Loans
9 accounts at a time then it knew the Discharged Loans records were inaccurate and prone to
10 errors, and thus rendered the loans unenforceable. Transworld knew this based on the records
11 Transworld received from NCO and the Trusts and their affiliates at the time of the servicing
12 transfer. However, Transworld concealed this material information from the Plaintiff and
13 putative Class members until less than twelve months before the commencement of this action.

14 **1. Transworld attorney network**

15 38. Based upon public disclosures, and upon information and belief, Transworld
16 retains a national network of law firms and attorneys to pursue delinquent borrowers by filing
17 collection lawsuits in state courts. One of these firms is P & F.

18 39. On information and belief, P & F is licensed as a collection agency in the State
19 of Washington, and is therefore subject to laws that govern the practice of such agencies,
20 including the federal Fair Debt Collection Practices Act ("FDCPA"), Washington's Collection
21 Agency Act ("CAA"), and Washington's Consumer Protection Act ("CPA").

22 **2. The Trusts, Bank of America, and TERI**

23 40. A debtor who files a Chapter 7 or Chapter 13 proceeding is entitled to a
24 discharge of their debts under either 11 U.S.C.A. 727 or 11 U.S.C.A. §1328, respectively. There
25 are certain exceptions to a discharge. A private educational loan can be nondischargeable if it
26 meets the criteria under 11 U.S.C.A. § 523(a)(8) of the Bankruptcy Code. The loans at issue

1 here in relation to the Plaintiff and the Class members did not meet any of the criteria under
2 § 523(8).

3 41. Subsection (A)(i) of § 523(8) only applies and makes a loan non-dischargeable if
4 they are “made under any program funded in whole or in part by a governmental unit or
5 nonprofit institution.” The loans which are the subject of the claims in this complaint did not
6 meet this requirement.

7 42. On information and belief, since 2003, the Trusts purchased a large number of
8 loans from Bank of America, NA (“BOA”) that BOA represented as being private educational
9 loans that were guaranteed by The Education Resources Institute, Inc. (“TERI”), a non-bona-
10 fide and purported non-profit organization, upon origination. The Trusts knew or had reason to
11 know that the Plaintiff’s loan accounts and the loan accounts of the putative class members;
12 could never be covered by any bona fide guarantees by TERI, and that TERI was not a
13 legitimate “non-profit” organization in any event.

14 43. In 2001, TERI entered into a purchase and sale agreement with a First
15 Marblehead Corporation (“FMC”), a for profit corporation, in which it sold its assets and
16 transferred the majority of its employees to FMC and placed the assets into a new for profit
17 subsidiary called First Marblehead Education Recourses, Inc. (“FMER”). TERI and FMC then
18 entered into a Master Servicing Agreement under which FMER would perform the loan
19 origination and servicing duties required of TERI under the Loan Origination Agreements
20 (“LOA”). Thereafter, TERI made significant changes to their bylaws in 2003 that were not
21 reported to the IRS. From 2002 till 2008, TERI paid FMER more than \$500 million for loan
22 origination, processing and other services even though they only earned only \$147 million from
23 LOAs. Additionally, in 2008, the balance of student loans outstanding guaranteed by TERI
24 totaled approximately \$16.9 billion, and TERI reserved only 2 percent of that balance, or \$326
25 million, in cash or cash equivalents, and marketable securities to cover defaults. These facts all
26 lead to the conclusion that TERI was not qualified to act as a bona fide non-profit organization.

1 44. The terms of any such guarantees for BOA loans were governed by a Guaranty
2 Agreement between TERI and BOA dated June 30, 2003 ("Guaranty Agreement"). (a copy of
3 which is Exhibit B, hereto), That agreement states in part that "if either party should become
4 subject to bankruptcy, receivership, or other proceedings affecting the rights of its creditors
5 generally, the party becoming subject to such proceedings will promptly notify the other party
6 thereof, and this Agreement will be deemed terminated immediately upon the initiation of such
7 proceedings without the need of notice to the other party." TERI declared bankruptcy in April
8 2008 and rejected the purported guaranties it previously made.

9 45. The Guaranty Agreement incorporated exhibits A-C that were not publicly
10 available and included the program guidelines for Bank of America's Direct to Consumer Loan
11 Program, the Servicer Data Requirements with a schedule of Guaranty Fee Amounts, and the
12 Certificate of Guaranty that among other things, included the contractual parameters for
13 underwriting. One of those parameters was that TERI would only guaranty loans subject to
14 credit underwriting criteria that allowed for loans up to the "cost of education less other
15 financial aid..." or otherwise known as the Costs of Attendance as defined by the IRS Code.
16 The Guaranty Agreement was not publicly available and known to the Plaintiff, the members of
17 the Class, and the general public until a period less than 12 months before the commencement
18 of this action. The conditional language of the Guaranty Agreement undermines any claim that
19 TERI "funded" the program under which the loans were made as required under § 523(A)(i).

20 46. Subsection (A)(ii) of § 523(8) does not apply to the loans which are the subject
21 of this complaint because they are not "funds received as an educational benefit, scholarship, or
22 stipend."

23 47. Subsection B of § 523(8) does not apply to loans which are the subject of this
24 complaint because they were not "qualified education loan[s], as defined in section 221(d)(1) of
25 the Internal Revenue Code of 1986" as alleged above.
26

B. Osure Brown Files for Bankruptcy

48. On November 29, 2012, Osure Brown and his then wife filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of Washington. Among the debts he listed on Schedule F of his bankruptcy petition was a debt to "Permant [sic] Recovery Inc." of Pleasanton, Cal., serviced by American Education Services of Harrisburg, Pa. on behalf of National Collegiate Trust, in the amount of \$143,588.15. He did not list U.S. Bank, TSI or P & F.

49. Between April 25 and April 30, 2013, NCO, on behalf of the Trusts and with the Trusts' authority, filed ten Proofs of Claims in Osure Brown's bankruptcy estate for amounts totaling \$97,350.83, to be paid to an entity called "Total Debt Management" at a post office box in Columbus, Ga. Each Proof of Claim misstated that the basis for the claim was "Money loaned non-dischargeable student loan," and included several attachments:

a. A "Statement of Accounts" listing the balance of the alleged loan prior to the filing date.

b. A notice from U.S. Bank identifying itself as the Special Servicer for one or another of the NCSLT Trusts and confirming NCO as the Trusts' subservicer.

c. A "Pool Supplement" evidencing the purported sale of certain loans from BOA to National Collegiate Funding LLC, which would in turn sell them to one of the Trusts. The Pool Supplement notes that the actual list of loans in each pool is specified by an associated Loan Schedule (variously Schedule 1, Schedule 2, or Schedule 3) of the Pool Supplement. However, the designated schedule itself is not attached.

d. A "Note Disclosure Statement" and part of a "Loan Request/Credit Agreement" or "Loan Application/Promissory Note" for each of the ten BOA loans, signed by Osure Brown as borrower and Tommy Brown as cosigner. Although each Loan Request/Credit Agreement excerpt states that the document consists of seven pages, each Proof of Claim only includes two pages, and does not include the terms and conditions of the associated loan.

1 e. The proof of claims and the exhibits omitted material information relating
2 to the loans that undermined the statement that the loans were non-dischargeable.

3 f. In the filings described in the previous paragraph, NCO and the Trusts
4 knew that representations of non-dischargeability asserted by them were false in light of
5 the representations and warranties in the Guaranty Agreement to which they had
6 knowledge (but the Plaintiff, class members, and general public did not), but NCO and
7 the Trusts elected to conceal that knowledge and misrepresented the true status of the
8 loan accounts and their dischargeability. The Trusts and their authorized agents and
9 affiliates made these knowing misrepresentations and omissions for the purpose of
10 deceiving not only the Plaintiff but also other class members, bankruptcy courts, and
11 other creditors entitled to relief in the bankruptcy proceedings.

12 50. Osure Brown's Chapter 13 bankruptcy plan stated that "[a]fter month 36, all
13 available plan payments after [secured debt] is paid in full, shall be distributed to the non-
14 dischargeable student loan creditors only, ECMC, American Educational Services, National
15 Collegiate Trust, Permant [sic] Recovery Inc. and any other unknown student loan lenders." The
16 statement made in the plan did not change the status of the loans because the loans had to meet
17 the criteria for an exception to discharge but did not. Moreover, it was based on the omissions
18 and misrepresentations described herein that the Defendants and their agents had failed to file
19 honest and accurate claims in the bankruptcy court and elected instead to conceal from the
20 Plaintiff and the bankruptcy court the true and accurate facts described herein until a period of
21 time less than 12 months before the commencement of this action. At most, the reference to it in
22 the plan shows that the effort to mislead and deceive the debtor worked.

23 51. Osure Brown entered into the Chapter 13 plan believing, based upon NCO's
24 knowingly false representations on behalf of the Trusts, that the debts claimed by NCO on behalf
25 of the Trusts were non-dischargeable. Had NCO or the Trusts not chosen to make false
26 representations and material omissions about the non-dischargeability of the student loan
accounts owned by the Trusts and chosen to conceal from them and the bankruptcy court the

1 terms and conditions of the Guaranty Agreement, proper objections to the proofs of claim could
2 have been asserted.

3 52. During the pendency of his bankruptcy case, Osure Brown made payments as
4 directed by his Chapter 13 plan, which the bankruptcy trustee distributed to creditors.

5 53. During the pendency of Osure Brown's bankruptcy case, the trustee distributed a
6 total of \$12,847.59 from the bankruptcy estate to the Trusts as payment on the ten fraudulent,
7 unfair, or deceptive Proofs of Claim filed by NCO on behalf of the Trusts. The Trusts would
8 not have been paid these sums if the truth concerning the loans was known and they were only
9 paid because the true status was knowingly and willfully concealed from the Plaintiff, the
10 bankruptcy court, and other creditors.

11 54. On December 29, 2017, having successfully completed his bankruptcy plan,
12 Osure Brown received an order of discharge of all dischargeable debts, including the debts
13 claimed by the Trusts, from the bankruptcy court under 11 U.S.C. § 1328(a). The Trusts did not
14 object to Osure Brown's discharge but could have done so if they believed the debts remained
15 due and owing. In addition, the Trusts did not appeal the bankruptcy court's discharge order in
16 favor of Osure Brown and against their interests.

17 55. Defendants, directly or through their principals and agents were given notice of
18 the discharge.

19 **C. Debt Collection Begins**

20 56. In October 2018, Patenaude & Felix sent ten letters, signed by Matthew Cheung,
21 that were received by Osure Brown stating that they would initiate collection efforts regarding
22 an outstanding balance claimed to be owed to the Trusts by Osure Brown. The collection letters
23 failed to reference the original creditor Bank of America and did not include any breakdown of
24 interest or service charge, collection costs, or late payment charges, if any, added to the original
25 obligation by the original creditor or the last payment made on the loans.

26 57. In response to a debt verification letter sent to Patenaude & Felix and signed for
by Matthew Cheung, Osure Brown received documentation regarding all ten loans, including

1 payment histories from American Educational Services, and payments on a Loan Payment
2 History Report after charge-off on September 4, 2012. Each loan verification response included
3 accrued interest for each loan. There is no indication on any payment history to indicate who
4 made the payments. The responses also concealed information available to the Trusts and its
5 debt collector Patenaude & Felix that would have identified to any reasonable person that
6 alleged debts did not meet the criteria for nondischargeability.

7 58. In January 2019, Osure Brown again received letters from Patenaude & Felix,
8 signed by Matthew Cheung, informing him of a potential settlement for each NCSLT loan,
9 indicating that they would discount a considerable portion of the obligation. This separate
10 communication also concealed information available to the Trusts and its debt collector
11 Patenaude & Felix that would have identified to any reasonable person that alleged debts did
12 not meet the criteria for nondischargeability.

13 **1. The Trusts File Suit**

14 59. On April 5, 2019, Osure Brown and Tommy Brown were sued by the Trusts,
15 represented by P & F, in ten separate cases in King County Superior Court, Nos. 19-2-09408-7,
16 19-2-09402-8, 19-2-0903-6, 19-2-09404-4, 19-2-09405-2, 19-2-09405-2, 19-2-09406-1, 19-2-
17 09407-9, 19-2-09409-5, 19-2-09410-9, and 19-2-09411-7. The cases were subsequently
18 consolidated into cause No. 19-2-09402-8.

19 60. In each case, the Trusts, Transworld, and P & F alleged that Osure Brown had
20 liability for each one of the ten Bank of America loans identified in his Chapter 13 bankruptcy
21 case, which, they alleged, had subsequently been purchased by the Trusts in consolidated loan
22 pools. These statements were false, unfair, and deceptive. In addition, these separate
23 communications also concealed information available to the Trusts and its debt collector
24 Patenaude & Felix that would have identified to any reasonable person that alleged debts did
25 not meet the criteria for nondischargeability.

1 61. After receiving the unfiled summons and complaints via process service in
2 February 2019, Osure Brown sent *pro se* notices of appearance on all ten cases to counsel at P
3 & F.

4 62. P & F sent copies of the filed lawsuits and affidavits by letter dated April 8, 2019
5 to Osure Brown. These separate communications also concealed information available to the
6 Trusts and its debt collector Patenaude & Felix that would have identified to any reasonable
7 person that the alleged debts did not meet the criteria for nondischargeability.

8 63. Each of the ten complaints filed by the Trusts, with the aid and assistance of U.S.
9 Bank and their debt collectors Transworld and P & F, was unfair, abusive, and deceptive in
10 multiple ways, as explained herein:

11 **2. The Trusts could not substantiate their ownership of the loans.**

12 64. In each case, the NCSLT Trusts concurrently filed an affidavit (collectively the
13 “Audet Affidavits”) signed by Jennifer A. Audet, an employee of Transworld, the NCSLT
14 Trusts’ debt collector. Each of Audet’s Affidavits claimed that Audet had personal knowledge
15 regarding the records pertaining to the loan at issue, had verified that there was an outstanding
16 principal balance on a loan currently owned by one of the Trusts, and was authorized by
17 Transworld and US Bank, National Association to make the representations in the affidavit.
18 Each Audet Affidavit also claimed that the associated loan had been transferred, sold and
19 assigned to the NCSLT Trusts. Each of the Audet Affidavits also concealed information
20 available to the Trusts and its debt collector Patenaude & Felix that would have identified to any
21 reasonable person that alleged debts did not meet the criteria for nondischargeability and in fact
22 were then discharged by Osure Brown’s prior bankruptcy case and no right to collect actually
23 existed.

24 65. Attached to each of the Audet Affidavits is a trio of exhibits purporting to
25 substantiate the chain of assignment for the loan. Exhibit A was a notice from U.S. Bank
26 identifying itself as the special servicer for a number of the Trusts, including the defendants,
and confirming Transworld as the trusts’ subservicer. Exhibit B was a document titled “Loan

1 Application/Promissory Note” or “Loan Request /Credit Agreement” allegedly signed by Osure
2 Brown as borrower and Tommy Brown as cosigner and submitted to BOA, along with a
3 document titled “Note Disclosure Statement” that includes additional information about the
4 alleged loan. Exhibit C consisted of a “Pool Supplement” evidencing the purported sale of
5 certain loans from BOA to The National Collegiate Funding LLC, which would in turn sell
6 them to one of the NCSLT Trusts, followed by a “Deposit and Sale Agreement” that purports to
7 record the sale of the pool of loans from National Collegiate Funding to the designated Trust.

8 66. In each case, both the Pool Supplement and the Deposit and Sale Agreement note
9 that the actual list of loans in each pool is specified by an associated Schedule (variously
10 Schedule 1, Schedule 2, or Schedule 3; collectively the “Loan Schedules”) of the associated
11 Pool Supplement. None of the Pool Supplements attached to any of the Audet Affidavits include
12 the associated Schedules referenced and thus cannot establish the validity of assignment under
13 RCW 19.16.270, despite the claim in the affidavits that Exhibit C “is a true and correct copy of
14 the assignment Agreement(s) described herein.”

15 67. The Audet Affidavits purposely did not disclose any information relating to the
16 inability of the loans to meet the criteria under 11 U.S.C.A. § 523(a)(8) or that the Trusts did not
17 have any of the schedules needed to prove assignment under RCW 19.16.270.

18 68. Additionally, the Audet Affidavits claimed that Tommy Brown had made
19 payments on the loans, with the last payment made for various loans in 2017 and 2018, without
20 disclosing that any payments made on the account were not made by Tommy Brown. When
21 subsequently challenged on the validity of the false Audet Affidavits, the Trusts responded by
22 replacing them on October 7, 2019 with a new affidavit (the “Luke Affidavit”) signed by
23 Bradley Luke, another Transworld employee presented as the custodian of records for the
24 Trusts.

25 69. The Luke Affidavit was accompanied by several exhibits that purported to
26 substantiate the Trusts’ ownership of the loans at issue. Like the Audet Affidavits, however, the
Luke Affidavit failed to provide any of the Loan Schedules required to prove a valid

1 assignment, or any other business records demonstrating that the Trusts had at any point
2 purchased any loans originated by Osure Brown and/or Tommy Brown. Instead, it provided
3 what appeared to be an excerpt of a spreadsheet, which appeared to have been expressly
4 generated for litigation purposes long after the loans were purportedly originated. Also, the
5 Luke Affidavit did not disclose any information relating to the inability of the loans to meet the
6 criteria under 11 U.S.C.A. § 523(a)(8) or that the Trusts did not have sufficient information to
7 properly pursue the claims before a court since they had been previously discharged in Osure
8 Brown's prior bankruptcy and therefore the Trusts had no right to attempt to collect. The Luke
9 Affidavit was a separate communication that also concealed information available to the Trusts
10 and its debt collector Patenaude & Felix that would have identified to any reasonable person
11 that alleged debts did not meet the criteria for nondischargeability.

12 **3. The Trusts could not prove that the loans survived bankruptcy.**

13 70. None of the complaints and amended and supplemental papers filed by NCSLT
14 disclosed that Osure Brown had scheduled the loans in bankruptcy and received a discharge of
15 all dischargeable debts prior to the filing of the complaints.

16 71. For a debt to be considered non-dischargeable under 11 U.S.C. § 523(a)(8)(A), it
17 must be "(i) an educational benefit overpayment or loan made, insured, or guaranteed by a
18 governmental unit, or made under any program funded in whole or in part by a governmental
19 unit or nonprofit institution; or (ii) an obligation to repay funds received as an educational
20 benefit, scholarship, or stipend."

21 72. The loans for which the Trusts filed claims did not meet the criteria under
22 § 523(a)(8)(A)(i) because they were not funded by a government unit or bona-fide nonprofit
23 institution.

24 73. The loans for which the Trusts filed claims also did not meet the criteria under
25 § 523(a)(8)(A)(ii) because they were not an obligation to repay funds received as an educational
26 benefit, scholarship, or stipend.

1 74. For a debt to be considered non-dischargeable under 11 U.S.C. § 523(a)(8)(B) it
2 must be a “qualified education loan, as defined in section 221(d)(1) of the Internal Revenue
3 Code of 1986....” The loans for which the Trusts filed claims against Osure Brown did not meet
4 these criteria.

5 75. The loans for which the Trusts filed claims were all purportedly related to Osure
6 Brown’s studies at Washington State University (“WSU”) and Bellevue College between 2003
7 and 2007.

8 76. The Guaranty Agreement between BOA and TERI states that “the borrower may
9 obtain funds under the program, up to the cost of education less other financial aid,” and that “if
10 the student wishes to borrow amounts in excess of a Participating School’s published cost of
11 attendance, a letter is required from the School stating that these additional funds are needed as
12 an education expense.” Those details and limitations on the Guaranty Agreement were not
13 known to the Plaintiff, Class members, or the public until less than 12 months before the
14 commencement of this action; the Defendants knew the details and limitations of the guaranty
15 agreement but chose to conceal it from the Plaintiff, Class members, and the public.

16 77. The TERI guaranty agreements were not disclosed to Plaintiff’s counsel until
17 December 2019 and by the Trusts to Plaintiff until January 2020.

18 78. In all subsequent paragraphs, the “published cost of attendance” at WSU
19 includes tuition, fees, room and board, transportation, and other living expenses, as published by
20 WSU for the appropriate time period.

21 79. In all subsequent paragraphs, “non-NCSLT financial aid” incorporates all
22 financial aid received by Osure Brown during his tenure at WSU that was not included in any of
23 the claims filed by the Trusts, Transworld, and P & F against Osure Brown and Tommy Brown
24 on April 5, 2019.

25 80. For the 2003–04 school year, the published cost of attendance at WSU for Osure
26 Brown’s attendance was \$18,914. He received non-NCSLT financial aid totaling \$18,914, or
100 percent of the published cost of attendance. In cause No. 19-2-09403-6, NCLST Trust

1 2005- 1 declared that BOA had loaned Osure Brown \$12,248 for the school year, every cent of
2 which was in excess of his actual cost of education less other financial aid.

3 81. For the 2004–05 school year, the published cost of attendance at WSU for Osure
4 Brown’s attendance was \$18,862. He received non-NCSLT financial aid totaling \$18,862, or
5 100 percent of the published cost of attendance. In causes Nos. 19-2-09404-4 and 19-2-09405-2,
6 NCLST Trusts 2005-2 and 2005-3 declared that BOA had loaned Osure Brown a total of
7 \$16,042.78 for the school year, every cent of which was in excess of his actual cost of education
8 less other financial aid.

9 82. For the 2005–06 school year, the published cost of attendance at WSU for Osure
10 Brown’s attendance was \$9,622. He received non-NCSLT financial aid totaling \$9,622, or 100
11 percent of the published cost of attendance. In causes No. 19-2-09409-5 and 19-2-09410-9,
12 NCLST Trusts 2006-1 and 2006-2 declared that BOA had loaned Osure Brown a total of
13 \$25,688.45 for the school year, every cent of which was in excess of his actual cost of education
14 less other financial aid.

15 83. For the 2006–07 school year, the published cost of attendance at WSU for Osure
16 Brown’s attendance was \$9,841. Osure Brown received non-NCSLT financial aid totaling
17 \$9,841, or 100 percent of the published cost of attendance. In cause Nos. 19-2-09402-8 and 19-
18 2-09411-7, NCLST Trust 2007-2 declared that BOA had loaned Osure Brown \$24,902.84 for
19 the school year, every cent of which was in excess of his actual cost of education less other
20 financial aid.

21 84. Under the terms of the 2003 Guaranty Agreement between BOA and TERI,
22 every cent loaned by BOA to Osure Brown was not guaranteed by TERI, because every cent
23 was in excess of his cost of education less other financial aid. The Guaranty Agreement was
24 concealed from Osure Brown by the Defendants until December 27, 2019 when a similar
25 guaranty agreement was unsealed in *Mata et.al. v National Collegiate Student Loan Trust*
26 *2006- 1*, Adv. No. 6:18-ap-01089-MH, Bankr. C.D. Cal. Dec. 27, 2019, Dkt No. 99. Thereafter,
Osure Brown’s attorney was able to obtain the BOA Guaranty Agreement in January 2020.

1 85. Further, under the terms of the 2003 Guaranty Agreement, every cent loaned by
2 BOA to Osure Brown was not guaranteed by TERI, because the agreement was nullified upon
3 TERI's 2008 bankruptcy.

4 86. Because none of the money BOA loaned to Osure Brown (which debt was
5 allegedly subsequently acquired by the Trusts) was guaranteed by a qualified non-profit
6 institution, all such debts were discharged at the conclusion of Osure Brown's Chapter 13
7 bankruptcy plan.

8 87. Therefore, the ten state court litigation claims filed by the Trusts against Osure
9 Brown and Tommy Brown were invalid, because any and all debts claimed by the Trusts had
10 been discharged in the prior bankruptcy. Each separate action to collect on these debts was false
11 and misleading since the Trusts had no legal right to pursue Osure Brown in debt collection
12 litigation and otherwise

13 88. The Trusts, Transworld, U.S. Bank and P & F were aware of all facts, and had
14 exclusive possession of these facts, which necessarily meant that every debt claimed by the
15 Trusts in the state court proceedings had been discharged in bankruptcy, but concealed that
16 knowledge from the Plaintiff and state court until less than 12 months before the
17 commencement of this action.

18 89. P & F also proceeded with filing actions that it knew could not be proven
19 because it had a vested interest in any recovery obtained—even though it had no right to pursue
20 collection on the discharged debts.

21 **D. Summary Judgment is Granted in Favor of the Browns**

22 90. On September 20, 2019, the Browns moved for summary judgment in their favor
23 in the consolidated matter for lack of standing and for failure to prove assignment of the loans,
24 arguing that Bradley Luke did not have the ability to testify about the NCSLT Trusts'
25 ownership of the loans at issue.

26 91. On October 24, 2019, the Browns' motion for summary judgment and associated
motions by all parties were heard before the King County Superior Court of the State of

1 Washington by the Hon. Nicole Gaines-Phelps. On December 24, 2019 the state court ordered
2 that summary judgment be granted in favor of Osure Brown and Tommy Brown in the
3 consolidated matter which incorporated oral findings of fact and conclusions of law found in the
4 transcript of the hearing attached as Exhibit A to Dkt No. 67 (“October 24, 2019 Hearing
5 Transcript”), attached hereto as Exhibit C.

6 92. The state court also struck the affidavit of Bradley Luke as hearsay, because Mr.
7 Luke was not employed by the entity that had custody and possession of the purported records
8 and did not have knowledge of the retention policies of BOA, the alleged originator of the
9 loans. Accordingly, the state court granted the motion for summary judgment in favor of the
10 Browns (“Order Granting Summary Judgment”), attached hereto as Exhibit D.

11 93. The NCSLT Trusts, and their debt collectors Transworld and P & F, did not
12 appeal the judgments entered against the Trusts in favor of the Browns. Those judgments are
13 now final judgments.

14 **E. The Trusts Possessed Knowledge that They Chose to Conceal from the**
15 **Plaintiff, Class Members, and State Courts.**

16 94. The Trusts were recently the subject of investigation by the CFPB.

17 95. On September 18, 2017 a complaint was filed by the CFPB against fifteen
18 National Collegiate Student Loan Trusts, including all of the defendant trusts in the instant
19 matter (collectively the “Collective NCSLT Trusts”), in the United States District Court for the
20 District of Delaware, Cause No. 17-cv-01323-GMS (ECF No. 1 therein) (“CFPB Complaint”),
21 attached hereto as Exhibit E.

22 96. The same day, the parties jointly moved therein for entry of a consent judgment
23 (ECF No. 3 therein)(“CFPB Proposed Consent Judgment”), attached hereto as Exhibit F.

24 97. The CFPB Complaint allege that unfair and deceptive practices in debt collection
25 are routine practices of the NCSLT Trusts and regardless of whether or not the CFPB Proposed
26 Consent Judgment is approved by a federal court against the NCSLT Trusts, the NCSLT Trusts
are on notice and have knowledge of the allegations, and so does the public.

1 98. That CFPB Proposed Consent Judgment is thus incorporated by reference here as
2 if fully set forth.

3 99. On September 15, 2017, more than a year and a half before filing suit against the
4 Browns, the CFPB issued a Stipulation and Consent to the Issuance of a Consent Order
5 (“Transworld Stipulation”) and a Consent Order in the matter of Transworld Systems, Inc. as
6 agent for the Collective NCSLT Trusts (“Transworld Consent Order”), filing both in 2017-
7 CFPB-0018, attached hereto as Exhibit G and H.

8 100. That Transworld Consent Order was issued specifically as to Transworld’s unfair
9 and deceptive acts and practices on behalf of, or in the name of, the NCSLT Trusts. The
10 Transworld Consent Order is both remedial and mandatory, and identified and prohibited many
11 of the unfair and deceptive acts and practices of Transworld on behalf of, or in the name of, the
12 NCSLT Trusts identified above.

13 101. In the Transworld Consent Order, the CFPB found that Transworld and its
14 nationwide network of law firms committed a number of offenses between November 1, 2014
15 and April 25, 2016, including:

16 a. Filing tens of thousands of collections lawsuits against borrowers in
17 which they did not possess the complete documentation needed to prove the NCSLT
18 Trusts owned the loans;

19 b. Filing tens of thousands of affidavits in support of collections lawsuits in
20 which the affiant swore they had personal knowledge of the debt, when in fact the
21 affiants frequently merely reviewed data on a computer screen, did not know the source
22 of the data or how it was collected and maintained, and lacked knowledge of the chain
23 of assignment records necessary to prove that the relevant Trust owned the loans;

24 c. Filing numerous lawsuits without the intent or ability to prove the claims,
25 if contested.

26 102. The Transworld Consent Order further found that these acts constituted
violations of the Consumer Financial Protection Act, 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

1 103. In 2018, the Collective NCSLT Trusts, through the Trusts' Owners (as defined in
2 the Trust Agreements), filed suit in Delaware Chancery Court against Transworld and two
3 codefendants, for breach of contract, charging them with costing the Collective NCSLT Trusts
4 billions of dollars and with causing "wrongful and fraudulent ...cases being brought against
5 thousands of borrowers." *See* Verified Amended Complaint, Exhibit A

6 104. Specifically, the Collective NCSLT Trusts have accused Transworld of injurious
7 falsehood for, among other things:

8 a. Recklessly making false and misleading representations to borrowers that
9 the Collective NCSLT Trusts had a right to sue the Plaintiff and putative class members,
10 when they did not;

11 b. Falsely representing to borrowers that the Collective NCSLT Trusts
12 possessed all of the notes, assignments and other documents needed to prove standing to
13 foreclose on their loans, when they did not;

14 c. In so doing, exposing the Collective NCSLT Trusts to lawsuits from
15 borrowers.

16 105. At the time the NCSLT Trusts filed suit against Osure Brown on April 5, 2019,
17 the Trusts were aware of the CFPB Consent Order, and of their lawsuit against Transworld and
18 other codefendants in Delaware Chancery Court.

19 106. At the time the NCSLT Trusts filed suit against Osure Brown on April 5, 2019,
20 the Trusts were aware of the reckless and injurious practices of Transworld as explained in the
21 Delaware lawsuit.

22 107. At the time the NCSLT Trusts filed suit against Osure Brown, with the aid and
23 assistance of Transworld and P & F, on April 5, 2019, the NCSLT Trusts, U.S. Bank,
24 Transworld, and P & F were aware of Transworld's reckless and injurious practices. Yet,
25 Transworld, U.S. Bank, P & F, and the NCSLT Trusts continued their unfair and deceptive
26 practices of flooding the courts with hundreds of debt collection actions without a reasonable

1 basis to do so and without the right to due so based on their prior admissions in the CFPB
2 Consent Orders.

3 108. The actions of the NCSLT Trusts, Transworld, U.S. Bank and P & F in regard to
4 Osure Brown were substantially identical to the actions that the Transworld Consent Order
5 found they took in regard to thousands of borrowers across the country in violation of the
6 Consumer Financial Protection Act.

7 109. The NCSLT Trusts, P & F, U.S. Bank and Transworld were aware that they
8 lacked the ability to prove their ownership of any loans taken out by Osure Brown at the time
9 they filed their collection action against the Browns.

10 110. The NCSLT Trusts are aware that they cannot prove they have a legitimate claim
11 on the \$12,847.59 paid to them from the bankruptcy estate of Osure Brown between 2012 and
12 2017. Yet, the NCSLT Trusts wish to retain the benefit from their improper actions.

13 111. The NCSLT Trusts and U.S. Bank are aware that the Loan Schedules related to
14 the purported student loans acquired by them are lost, and they do not exist now, if they ever
15 did. No entity has the Loan Schedules and thus these loans are uncollectible by any successor
16 because no one can prove valid assignment and history of the loans.

17 **V. CLASS ALLEGATIONS**

18 112. Plaintiff Osure Brown also sues on behalf of others, pursuant to Fed. R. Civ. P.
19 R. 23, who are similarly situated to Mr. Brown as a Washington Class or Classes. This Class or
20 Classes of similar persons are defined as follows:

21 a. **Bankruptcy Class:** Any person who received a bankruptcy discharge
22 from a bankruptcy court located in the State of Washington and against whom the
23 Trusts, directly or indirectly through their authorized agent(s), filed bankruptcy proofs of
24 claims of alleged non-dischargeable student loan debts, where the student loans were in
25 fact for sums in excess of the actual published cost of attendance at the person's school,
26 and/or were not made, insured, or guaranteed by a governmental unit, or made under any

1 program funded in whole or in part by a governmental unit or bona fide nonprofit
2 institution.

3 **b. FDCPA Class:** Those persons with an address in the State of
4 Washington whom P & F or Transworld has communicated with directly or indirectly
5 for the purpose of collecting a purported student loan owned by a Trust after the person
6 had obtained a discharge of the debt under Chapter 7 or Chapter 13 of the Bankruptcy
7 Code or the Defendants are collaterally estopped from collecting based on the final
8 judgment described in ¶¶ 90-93. On information and belief, most but not all members of
9 the FDCPA Class are also members of the Bankruptcy Class.

10 113. Excluded as members of the Bankruptcy Class and the FDCPA Class are any
11 persons who fall within these definitions if the person is (i) an employee or independent
12 contractor of any of the Defendants; (ii) a relative of an employee or independent contractor of
13 any of the Defendants; (iii) is an employee of the Court where this action is pending or (iv) have
14 previously released the Defendants for the claims asserted in this action.

15 114. The Class definitions may be amended or modified.

16 115. Osure Brown proposes to represent himself and the Bankruptcy Class and the
17 FDCPA Class defined above.

18 116. Osure Brown qualifies as a person who is a member of the respective Class
19 definitions he seeks to represent.

20 117. The members of the Bankruptcy Class and FDCPA Classes are capable of being
21 described without difficult managerial or administrative problems. The members are readily
22 identifiable from the information and records in the possession, custody or control of the
23 Defendants, public records, and records of third parties including the consumer reporting
24 agencies who report the Defendants furnished credit information to others as part of their
25 business.

26 118. Upon information and belief based on public records, the Bankruptcy Class and
FDCPA Class are each sufficiently numerous such that individual joinder of all members is

1 impractical. This allegation is based on the fact that the Trusts have sued thousands of
2 consumers nationwide, including hundreds of cases in Washington by P & F and Transworld,
3 and also filed thousands of proofs of claims in bankruptcy proceedings throughout the country.

4 119. There are questions of law and fact common to the Bankruptcy Class which
5 predominate over any questions affecting only the individual members of the Bankruptcy Class.
6 The common issues include, but are certainly not limited to:

- 7 a. Whether the debts fell within the limited exception to bankruptcy
8 discharge;
- 9 b. Whether the Trusts and the other defendants pursued collections of debts
10 that were discharged in bankruptcy;
- 11 c. Whether the Trusts had knowledge of the bankruptcy discharges.

12 120. There are questions of law and fact common to the FDCPA Class which
13 predominate over any questions affecting only the individual members of the FDCPA Class.
14 The common issues include, but are certainly not limited to:

- 15 a. Whether the Defendants have used false, deceptive or misleading
16 statements in connection with its attempts to collect debts from the members of the
17 FDCPA class;
- 18 b. Whether the Defendants have made false statements concerning the
19 character, amount or legal status of any debts, misrepresenting, directly or indirectly,
20 expressly or by implication, that Defendants had verified that the debt was the accurate
21 amount, owed by the consumer, and collectible;
- 22 c. Whether the Defendants have made any threat to take legal action that
23 they do not have the right to take in light of the class member's bankruptcy discharges;
- 24 d. Whether the Defendants misrepresented, directly or indirectly, expressly
25 or by implication, when filing debt collection lawsuits and other separate
26 communications that they intended to and could prove their claims when they could not;

1 e. Whether the Defendants have used any false representation or deceptive
2 means to collect or attempt to collect any debt;

3 f. Whether the Defendants engaged in any material investigation as to the
4 completeness or authenticity of records to prove the chain of title and/or ownership of
5 loan documents.

6 g. Whether the Defendants engaged in any investigation of prior collection
7 activities to determine if any unfair practice had been committed which as a matter of
8 law prevent collection of interest, costs or charges under RCW 19.16.450, or otherwise;

9 h. Whether the Defendants engaged in any investigation of the validity or
10 truth of statements contained in the alleged loan documents;

11 i. Whether the Defendants both negligently and intentionally caused false
12 evidence to be submitted in student loan collection actions commenced in the state of
13 Washington where they knew or should have known that the affidavits supporting the
14 lawsuits were false or that the affiant lacked personal knowledge of the matters to which
15 he or she attested;

16 j. Whether the Defendants sued, directly and indirectly, on a debt not owed
17 to the;

18 k. Whether the Defendants have used any unfair or unconscionable means
19 to collect or attempt to collect any debt;

20 l. Whether the Defendants filed and served lawsuits without standing or
21 ownership of the alleged debt; and

22 m. The sum of the Defendants' net worth;

23 121. The Plaintiff Osure Brown's claims are the same as those of each member of the
24 Bankruptcy Class and FDCPA Class and are based on the same legal and factual theories.

25 122. There is no material difference between his claims and the claims of the
26 members of the respective classes he seeks to represent.

1 123. The Defendants' likely defenses (though unavailing) are and will be typical of
2 and materially the same or identical for each of the Bankruptcy Class and FDCPA Class and
3 will be based on the same legal and factual theories. There are no valid, unique defenses.

4 124. Osure Brown will fairly and adequately represent and protect the interests of the
5 class members.

6 125. Osure Brown does not have any interests antagonistic to the members of the
7 respective classes he seeks to represent.

8 126. Osure Brown seeks certification pursuant to Fed. Civ. P. 23(b)(2) and (b)(3).

9 127. The Defendants' acts were wrongful on grounds that apply uniformly across the
10 Bankruptcy Class and FDCPA Class so that the underlying statutory relief afforded to the
11 claims below is appropriate respecting each of the classes as a whole. Further, common
12 questions predominate over any individual questions and a class action is superior for the fair
13 and efficient adjudication of this controversy. A class action will cause an orderly and
14 expeditious administration of class members' claims, and economies of time, effort, and
15 expenses will be fostered and uniformity of decisions will be ensured.

16 128. Apart from details such as names, dates, and dollar amount of Discharged Loans,
17 there are no individual questions to establish the claims of the Plaintiff and the Bankruptcy
18 Class or the FDCPA Class members. The claims are based on Defendants' omissions and lack
19 of right to collect from Class Members for Discharged Loans.

20 129. Osure Brown's claims are typical of the claims of the Bankruptcy Class and
21 FDCPA Class members.

22 130. The Bankruptcy Class members have suffered damages, losses, and harm similar
23 to those sustained by Osure Brown in relation to the improper, unfair, and deceptive collection
24 activities of the Defendants in violation of state and federal laws governing their activities.

25 131. There is an actual controversy between the Bankruptcy Class members and the
26 Defendants.

1 instrumentalities of interstate commerce or the mails related to the collection of consumer debts
2 on behalf of others including the Trusts.

3 137. By communicating with the Plaintiff and FDCPA class members, directly and
4 indirectly, and threatening and/or actually pursuing litigation and demanding sums not legally
5 due from the Plaintiff and the FDCPA class members, which are barred from collection against
6 the Plaintiff and FDCPA Class members as a result of bankruptcy discharges and an inability to
7 prove their claims, Transworld and P & F used false, deceptive, or misleading representations or
8 means in connection with the collection of consumer debts of the Named Plaintiff and FDCPA
9 Class members in violation of 15 U.S.C. § 1692e, 1692e(2), 1692e(5) and 1692e(10).

10 138. Alternatively to the claims asserted in the previous paragraph, Transworld's and P
11 & F's actions and omissions described herein in relation to pursuing discharged debts and their
12 knowledge of the Trust's inaccurate and incomplete records which are not sufficient to pursue
13 debt collection actions also constitute unfair or unconscionable means to collect or attempt to
14 collect from the Named Plaintiff and FDCPA Class Members in violation of 15 U.S.C. § 1692f.

15 139. Named Plaintiff and the FDCPA Class members have suffered actual economic
16 and non-economic damages, as more fully described *supra* and have incurred attorney's fees and
17 court costs as a result of Transworld's and P & F's illegal debt collection practices and direct and
18 indirect actions described herein.

19 140. The FDCPA provides for statutory damages in addition to actual damages.

20 **B. COUNT II: CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF**
21 **ON BEHALF OF THE PLAINTIFF AND THE FDCPA CLASS AGAINST**
22 **ALL DEFENDANTS.**

23 141. Plaintiff Osure Brown incorporates all preceding paragraphs as if set forth fully
24 herein and assert this claim on his behalf and on behalf of FDCPA Class members against all
25 Defendants.

26 142. There is an actual controversy between the parties concerning the enforceability
of the debts that the Defendants have sought to collect from the Plaintiff and the FDCPA Class.

1 143. The Plaintiff and the FDCPA Class seek a declaratory judgment pursuant to Fed.
2 R. Bankr.P. 7001(9) and 28 U.S.C. § 2201 of the respective rights of the parties.

3 144. The Plaintiff and the FDCPA Class seek a declaration that the Defendants are
4 estopped from claiming the right to collect the debts from the Plaintiff and the FDCPA class by
5 the judgment entered in favor of the Plaintiff in the prior actions filed against him described in ¶
6 that the Defendants seek to collect are discharged and may not be collected.

7 **C. COUNT III: VIOLATION OF THE DISCHARGE INJUNCTION ON**
8 **BEHALF OF THE PLAINTIFF AND THE BANKRUPTCY CLASS**
9 **MEMBERS AGAINST ALL DEFENDANTS.**

10 145. Plaintiff Osure Brown incorporates all preceding paragraphs as if set forth fully
11 herein and asserts this claim on his behalf and on behalf of Bankruptcy Class members against
12 the Defendant Trusts only.

13 146. The Defendant Trusts have attempted to collect on discharged debts of Osure
14 Brown as a personal liability in violation of 11 U.S.C § 524(a), which is subject to enforcement
15 through the bankruptcy code's contempt powers under 11 U.S.C § 105.

16 147. As discussed herein, the Plaintiff and Bankruptcy Class members have been
17 damaged by the Defendant Trusts by (i) their attempts at debt collection through letters
18 attempting to collect debt that was discharged in bankruptcy and (ii) their improper post-
19 bankruptcy debt collection actions brought in state court for debts which were discharged in
20 bankruptcy.

21 148. It would be inequitable and unjust to permit the Trusts to retain their receipts
22 obtained on any discharged debts.

23 **D. COUNT IV: CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF**
24 **ON BEHALF OF THE PLAINTIFF AND THE BANKRUPTCY CLASS**
25 **AGAINST ALL DEFENDANTS.**

26 149. Plaintiff Osure Brown incorporates all preceding paragraphs as if set forth fully
herein and asserts this claim on his behalf and on behalf of Bankruptcy Class members against
the Defendant Trusts only.

1 defendant;

2 iv. The Plaintiff and FDCPA Class be awarded actual damages against the
3 Defendants Transworld and P & F under Count I in an amount to be determined at trial;

4 v. The Plaintiff and FDCPA Class the declarations sought and injunctive
5 relief sought in Count II and enjoin the Defendants from further collection of discharged
6 debts;

7 vi. The Plaintiff and the FDCPA Class be awarded their costs, including
8 attorney fees, pursuant to the FDCPA; and

9 vii. The Plaintiff and FDCPA Class be awarded such other and further relief as
10 may be appropriate and proper.

11 WHEREFORE, the Plaintiff and the Bankruptcy Class also pray for the following
12 relief and judgment against the Defendants pursuant to Count III of this Complaint:

13 viii. The Court certify a Bankruptcy Class of persons as defined herein subject
14 to modification or amendment;

15 ix. The Court appoint Plaintiff and his counsel to represent the Bankruptcy
16 Class certified;

17 x. The Plaintiff and Bankruptcy Class be awarded actual damages against the
18 Defendants in an amount to be determined at trial;

19 xi. The Court grant the declarations sought and injunctive relief and enjoin the
20 Defendants form further collection of discharged debts;

21 xii. The Plaintiff and the Bankruptcy Class be awarded their costs, including
22 attorney fees to the extent allowed by law; and

23 xiii. The Plaintiff and Bankruptcy Class be awarded such other and further
24 relief as may be appropriate and proper.
25
26

1 Dated this 25th of June 2020.

2 /s/ Christina L Henry
3 Christina L Henry, WSBA 31273
4 Counsel for Plaintiff
5 HENRY & DEGRAAFF, PS
6 787 Maynard Ave S
7 Seattle, WA 98104
8 206-330-0595 Fax 206-400-7609
9 *chenry@hdm-legal.com*

10 /s/ Scott C. Borison
11 Scott C. Borison (Pro Hac Vice)
12 Borison Firm, LLC.
13 Counsel for Plaintiffs
14 1900 S. Norfolk St. Suite 350
15 San Mateo CA 94401
16 301-620-1016 Fax 301-620-1018
17 *scott@borisonfirm.com*

18 /s/ Phillip R. Robinson
19 Phillip R. Robinson (Pro Hac Vice)
20 Consumer Law Center LLC
21 8737 Colesville Road, Suite 308
22 Silver Spring, MD 20910
23 (301) 448-1304
24 *phillip@marylandconsumer.com*